

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8486 of 2014

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Prahalad Rai Barolia & Ors

.... Petitioner/s

Versus

Sunita Agrawal & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 21-01-2016 Heard learned counsel Mr. Nachiketa Jha for the petitioners and learned senior counsel Mr. S.S. Dvivedi appearing on behalf of the respondents.

This application under Article 227 of the Constitution of India has been filed by the petitioners against the order dated 20.12.2013 passed by the learned Execution Munsif, Muzaffarpur in Miscellaneous Case No.26 of 2009/24 of 2009 whereby the court below held that the application filed by the petitioners regarding maintainability of the miscellaneous case shall be considered at the time of hearing of the miscellaneous case after evidence.

It appears that the petitioners filed Eviction Suit No.30 of 2006 which was decreed. Thereafter the petitioners filed Execution Case No.23 of 2009/19 of 2009 for execution of the



said decree. In the said execution case respondent nos.1 and 2 filed application under Order 21 Rule 97 CPC claiming independent title in the suit property. The said application under Order 21 Rule 97 CPC was registered as Miscellaneous Case No.26 of 2009/24 of 2009. The present petitioners, who are decree-holders, filed application raising the question about maintainability of the said miscellaneous case. The court below by the impugned order has held that at this stage title cannot be decided in view of the disputed question, therefore, after evidence the same shall be disposed of.

The learned counsel for the petitioners submitted that since the respondent nos.1 and 2 have already filed title suit, this application under Order 21 Rule 97 CPC is not maintainable. So far this question raised by the learned counsel for the petitioners is concerned, has already been settled by Hon'ble Supreme Court in the case of **Tanzeem-e-Sufia Vs. Bibi Haliman and others, A.I.R. 2002 SC 3083**. The Supreme Court has already held that on the ground of pendency of suit the application under Order 21 Rule 97 CPC cannot be rejected. Moreover, in the present case the court below has only said that all these questions shall be decided in the miscellaneous case. In such view of the matter the

impugned order cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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